

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 13, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Walter Schmidt

BOARD MEMBERS ABSENT:

SECRETARY TO THE BOARD: Sheri K. Mount

OTHERS PRESENT: Rich & Hollie Hierl, BA05:045, petitioners
Dorothy Verhein, BA05:049, neighbor
Dave & Kathy Czerniejewski, BA05:049, petitioners
Brad Dagin, BA05:048, attorney
Don Murn, BA05:048, neighbor
Architect, BA05:048
Builder, BA05:048
Mr. & Mrs. Rodney Denboer, BA05:048, petitioners
David Dulin, BA05:047, petitioner
Paul & Julie Payne, BA05:040, petitioners
Architect/Builder, BA05:040

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of June 22, 2005.*

The motion was seconded by Mr. Tarmann and carried unanimously.

NEW BUSINESS:

BA05:040 PAUL AND JULIE PAYNE

Mr. Bartholomew *I make a motion to approve the request in accordance with the staff's recommendation, as stated in Staff Report, with the conditions recommended in the Staff Report with the following modifications to Conditions #2 and #6:*

Condition #2 shall be changed to read: "The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, and the attached garage do not exceed 2,500 sq. ft. There shall be no "in-fill" of the area over the Great Room i.e. a full second floor is not permitted."

Condition #6 shall be changed to read: "The residence and attached garage and any other appurtenances must be a minimum of 15 ft. from the 100-year floodplain elevation or the Ordinary High Water Mark of Tearney Lake, whichever is more restrictive, with overhangs not to exceed two (2) ft. in width."

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed residence must be reduced in size so that the total footprint, including the first floor, any covered decks, covered patios, and/or covered porches, and the attached garage does not exceed 1,800 sq. ft. This will result in approximately 8,322 sq. ft. of open space on the property.
2. The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, and the attached garage do not exceed 2,500 sq. ft.
3. The proposed residence must have a first floor of at least 850 sq. ft. and an attached garage of at least 400 sq. ft.
4. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence and attached garage must also conform to the height requirement of the Ordinance.
5. The residence must be at least 11 ft. from the side lot lines, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width.
6. The residence and attached garage must be a minimum of 15 ft. from the 100-year floodplain elevation or the Ordinary High Water Mark of Tearney Lake, whichever is more restrictive, with overhangs not to exceed two (2) ft. in width.
7. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, any deck or patio, as well as any proposed sidewalks, stairs, walkways, and/or retaining walls, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the location of the 100-year floodplain elevation on the property.

9. No retaining walls will be permitted unless the Planning and Zoning Division staff determines that they are necessary for erosion and sediment control. No retaining walls will be permitted within 5 ft. of the side lot lines, without approval from the Town of Oconomowoc Plan Commission and the Waukesha County Park and Planning Commission.
10. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the Plat of Survey required in Condition No. 8.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. It has been demonstrated, as required for a variance, that denial of the requested variances from the shore and floodplain setback, offset, floor area and open space requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The petitioners have worked in good faith to design a house plan that fits into the very limited and narrow building envelope that was suggested by Waukesha County Planning staff and the Board of Adjustment at their last public hearing. Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property. It is felt by the Waukesha County staff, that the residence and attached garage, as recommended, would still provide for a reasonable use of the property. As recommended, a footprint of 1,800 sq. ft. and a total floor area of 2,500 sq. ft. (not including the basement square footage) provides a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of a residence and attached garage that will be appropriately sized for the lot, not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:045 RICH & HOLLIE HIERL

Mr. Tarmann

I make a motion to approve the requests in accordance with the staff's recommendation, as stated in Staff Report, with the conditions recommended in the Staff Report with the following modification to Condition #1:

Condition #1 shall be modified to read: "The structure shall be no larger than the existing foundation (23 ft. X 23 ft.) as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width."

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The structure shall be no larger than the existing foundation (23 ft. X 23 ft.).
2. The structure must contain only one story and it must conform to the height requirements of the Ordinance. The proposed building may contain an upper-level storage area only if it conforms to the height requirements, and only if that upper level is not accessible via a permanent staircase. The upper level may only be accessed via pull-down stairs.
3. Prior to issuance of a zoning permit, a stakeout survey showing the location of the proposed structure in relation to the lot line must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. The structure is existing and substantially conforming; it is only slightly closer to the lot line than required. The lot is large (4.2 acres) and in compliance with all other provisions of the Ordinance. The approval, with the recommended conditions, will permit the repair and remodel of an existing accessory structure and is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:047 DAVID & KAREN DULIN

Mr. Schmidt

I make a motion to approve the requests for variances from the floor area ratio and open space requirements and deny the requests for variances from the shore setback, floodplain setback, and remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Waukesha County Shoreland & Floodland Protection Ordinance with the following conditions:

1. *The two existing detached garages must be removed within 6 months of issuance of a zoning permit for the new residence and attached garage. A performance bond shall be filed with the Waukesha County Department of Parks & Land Use to ensure that the garages will be removed in a timely manner. If the garages are not removed in a timely manner, the performance bond will allow the County to remove the garages at the Property Owner's expense.*
2. *The proposed residence must be reduced in size so that the total footprint, including the first floor, any covered decks, covered patios, and/or covered porches, and the attached garage does not exceed 1,810 sq. ft. This will result in approximately 10,387 sq. ft. of open space on the property.*
3. *The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, the attached garage and the existing boathouse do not exceed 2,700 sq. ft. This will result in a floor area ratio of approximately 22.1%.*

4. *The proposed residence must have a first floor of at least 850 sq. ft. and an attached garage of at least 400 sq. ft.*
5. *The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence and attached garage must also conform to the height requirement of the Ordinance.*
6. *The residence and attached garage must meet the shore and floodplain setback requirements, in all locations, with overhangs not to exceed two (2) ft. in width.*
7. *The proposed residence and attached garage must meet the road setback requirements.*
8. *The residence must be at least 12.6 ft. from the side lot lines, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width.*
9. *Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.*
10. *Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage, existing boathouse and any other appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*
11. *No retaining walls will be permitted unless the Department of Parks & Land Use staff determines that they are necessary for erosion and sediment control. No retaining walls will be permitted within 5 ft. of the side lot lines, without approval from the Town of Summit Plan Commission and the Waukesha County Park and Planning Commission.*
12. *In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion*

and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 10.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The petitioners will be able to use the property for a permitted use without the proposed variances from shore setback, floodplain setback, floor area ratio, open space and remodeling a non-conforming structure in excess of 50% of its fair market value. There is an available building envelope for a reasonably sized new residence and attached garage that would allow for a residence and attached garage in a completely conforming location and conforming size; especially when considering the amount the property owners propose to spend on the remodel and addition. Alternatively, it is possible to continue utilizing the structure and property "as is". The available conforming building envelope for a new structure would provide for a reasonable use of this property and, therefore, would be in conformance with the purpose and intent of the Ordinance.

If a new or alternative proposal for a new residence and attached garage requires the request of variances, another public hearing before the Waukesha County Board of Adjustment would be required.

BA05:048 RODNEY J. DENBOER

Mr. Schmidt *I make a motion to deny the requests in accordance with the staff's recommendation, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Tarmann and carried with a 3-2 vote.

The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioner has already been granted a variance that provides for a reasonable use of the property. The approval of that previous variance, with the previously recommended conditions, allows for a reasonable use of the property that is not unnecessarily burdensome and is in scale with the lot's size. Further, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property. It has not been demonstrated, as required for a variance, that denial of the additional requested variances from the shore and floodplain setback requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. In addition, it is felt by Waukesha County staff that approval of these variances would be detrimental to the public interest and be harmful to the natural resources in the area. Allowing this structure to be placed 20 ft. closer to the shore than is required will then allow for future structures to be placed closer to the lake. Future

improvements on nearby properties would be able to use this property for setback averaging, allowing more and more encroachment on the required 75 ft. setback requirement. It is possible to construct a reasonably sized residence and attached garage that remains the required distance from the shore and the floodplain. While there are steep slopes on the property, this is not a unique situation to this property. All of the properties in the immediate area contain the same topography as this lot. More importantly, it is possible to redesign the home and build in a location that would be conforming to the shore and floodplain setback requirements.

However, the steep slopes on the property are a physical limitation, necessitating a road setback variance in order to avoid the need for extensive filling and to permit a reasonably sized house and garage to be located in conformance with the shore and floodplain setback requirements. A road setback variance, with the recommended conditions, would not interfere with the public's use of the road or be a safety hazard. It is felt that the requested offset variance to permit a new residence to be located 5.4 ft. from both side lot lines is not justified, but that some relief from the offset requirement is necessary in order to facilitate the location of a new residence in conformance with the shore and floodplain setback requirements. A minimum offset of 10 ft. from the side lot lines, as recommended, is in conformance with the minimum offset that would be required if the property had an average lot width of 60 ft. or less, as is the case with nearly all of the other properties on this portion of South Shore Dr. Therefore, the denial of the shore and floodplain setback and approval of the previously requested variances from the road setback, offset, floor area ratio, and open space requirements, as conditioned in the Decision Letter dated July 28, 2004, provides a reasonable use of the property, is not unnecessarily burdensome, would not be contrary to the public interest and therefore is in conformance with the purpose and intent of the Ordinance.

BA05:049 DAVID & KATHY CZERNIEJEWSKI

Mr. Bartholomew

I make a motion to approve the requests for variances from the floor area ratio and open space requirements and deny the request for variances from the road setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance in accordance with the staff's recommendation, as stated in Staff Report, with the conditions recommended in the Staff Report with the following modification to Condition #2:

Condition #2 shall be modified to read: "The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, and the attached garage do not exceed 2,200 sq. ft. This will result in a floor area ratio of approximately 24.4%."

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for conditional approval, with the following conditions:

1. The proposed residence must be reduced in size so that the total footprint, including the first floor, any covered decks, covered patios, and/or covered porches, and the attached garage does not exceed 1,350 sq. ft. This will result in approximately 7,650 sq. ft. of open space on the property.

2. The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, and the attached garage do not exceed 2,000 sq. ft. This will result in a floor area ratio of approximately 22.2%.
3. The proposed residence must have a first floor of at least 850 sq. ft. and an attached garage of at least 400 sq. ft.
4. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence and attached garage must also conform to the height requirement of the Ordinance.
5. The residence must be at least 7 ft. from the side lot lines, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width.
6. The residence and attached garage, including any decks, patios, and/or covered porches must be a minimum of 75 ft. from the Ordinary High Water Mark or 50 ft. from the 100-year floodplain elevation (as long as the elevation at the lowest exposure is at least 3 ft. above the 100-year floodplain elevation) of Upper Nemahbin Lake, whichever is more restrictive, with overhangs not to exceed two (2) ft. in width.
7. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, any deck or patio, as well as any proposed sidewalks, stairs, walkways, and/or retaining walls, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the location of the 100-year floodplain elevation on the property.
9. No retaining walls will be permitted unless the Planning and Zoning Division staff determines that they are necessary for erosion and sediment control. No retaining walls will be permitted within 5 ft. of the side lot lines, without approval from the Town of Summit Plan Commission and the Waukesha County Park and Planning Commission.
10. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the Plat of Survey required in Condition No. 8.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested road setback variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the

property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. First of all, it is possible to continue utilizing the structure and property "as is". The current structure meets the minimum district requirements for size and therefore already provides use of the property. Secondly, it is also possible to construct a new residence with attached garage in a conforming location and to a more conforming size than currently proposed. While the property does have physical limitations due to the fact that it does not meet the district size and width requirements, there is a reasonable building envelope available for a new residence and attached garage that allows a residence and attached garage to be built in a completely conforming location.

However, since the property is smaller than the district requires, some relief from the floor area and open space requirements is appropriate. However, the Board should grant only the minimum relief necessary to provide for reasonable use of the property. It is felt by the Waukesha County staff that the proposed residence and attached garage is too large for the lot. Waukesha County staff feels that the recommended residence and attached garage provides the relief necessary to allow reasonable use of the property. As recommended, a footprint of 1,350 sq. ft. and a total floor area of 2,000 sq. ft. (not including the basement square footage) provides a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of a residence and attached garage that will be appropriately sized for the lot, not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 9:55 p.m.*

The motion was seconded by Mr. Schmidt and carried unanimously.

Respectfully submitted,

Sheri K. Mount
Secretary, Board of Adjustment